

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ANTONIO MEDEROS, )  
                     Petitioner, )  
                                     ) )  
                     v. ) C.A. No. 04-12598-GAO )  
                                     ) )  
 BRUCE CHADBOURNE, et al., )  
                     Respondents. )

MEMORANDUM AND ORDER

For the reasons stated below, petitioner's Application to Proceed Without Prepayment of Fees is denied without prejudice and his Motion for Leave to Request U.S. Marshal Service is denied as moot. If petitioner wishes to proceed with this action, he shall either pay the \$5 filing fee for this action or submit an new application to proceed without prepayment of fees accompanied by a certified copy of his institutional account statement within thirty-five days of the date of this Memorandum and Order.

## DISCUSSION

On December 9, 2004, petitioner Antonio Mederos, a resident of the Massachusetts Treatment Center, filed his self-prepared (1) Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241; (2) Application to Proceed Without Prepayment of Fees and Affidavit; and (3) Motion for Leave to Request U.S. Marshal Service.

A party filing a Section 2254 habeas corpus petition must either (1) pay the \$5 filing fee for habeas corpus actions or (2)

file an application to proceed without prepayment of fees. See 28 U.S.C. § 1914(a) (fees); § 1915 (proceedings in forma pauperis). An application for waiver of the filing fee must be accompanied by a document certifying the amount of funds on deposit to the petitioner's credit at his institution of incarceration. Rule 3(a) of the Rules Governing Section 2254 Cases (if petitioner desires to prosecute petition in forma pauperis, he shall file the affidavit required by § 1915 and a certified statement of amount of funds in prisoner's institutional account); see 28 U.S.C. § 1915(a)(2). Because petitioner's fee-waiver application was not accompanied by a certified copy of his institutional account statement, his application will be denied without prejudice to refiling with a copy of such statement.

By Order dated December 17, 2004, the Clerk was directed to serve a copy of the habeas petition. See Docket No. 4. Thus, petitioner's Motion for Leave to Request U.S. Marshal Service is subject to dismissal as moot.

ORDER

Accordingly, it is hereby

ORDERED, petitioner's Motion for Leave to Request U.S. Marshal Service is denied as moot; and it is further

ORDERED, petitioner's Application to Proceed Without Prepayment of Fees is denied without prejudice to refiling with a certified copy

of his institutional account statement.

If petitioner wishes to proceed with this action, he shall, within thirty-five (35) days of the date of this Memorandum and Order, submit the \$5 filing fee or an application to waive prepayment of the filing fee with a certified account statement for the 6-month period immediately preceding the filing of this petition or this action will be dismissed without prejudice for failure to pay the filing fee.

The Clerk is directed to send petitioner a copy of an Application to Proceed Without Prepayment of Fees and Affidavit.  
SO ORDERED.

Dated at Boston, Massachusetts, this 29th day of December, 2004.

/s/ George A. O'Toole, Jr.  
GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE